

Resolution No. 57-01
Date Enacted 5-30-01
subject Matter: Makah Gray Whale
Management Plan Amendments

RESOLUTION NO. 57-01 OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe of the Makah Indian Reservation, Washington, by authority of the Constitution and By-Laws of the Makah Indian Tribe as approved on May 16, 1936, by the Secretary of the Interior;

WHEREAS, the Treaty of Neah Bay secures in perpetuity the Tribe's right of taking fish and whaling and sealing at all usual and accustomed grounds and stations;

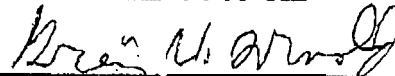
WHEREAS, on October 23, 1997, the International Whaling Commission approved the Makah Tribe's request for an aboriginal subsistence quota of 20 gray whales which may be taken between the years 1998 and 2002;

WHEREAS, on January 31, 1998, the Council adopted Resolution No. 67-98 which adopted the Management Plan for Makah Treaty Gray Whale Hunting for the Years 1998-2002;

WHEREAS, after consultation with the Makah Whaling Commission and the National Marine Fisheries Service, the Council has determined that it is necessary to amend the Management Plan so as to allow for greater flexibility in the times and areas in which Tribal members are permitted to hunt while still providing a high margin of safety for the conservation of the gray whale and public safety;

NOW THEREFORE BE IT RESOLVED that Makah Gray Whale Management Plan for 1998-2002 is hereby amended as set forth in the Makah Gray Whale Management Plan for 1998-2002 As Amended April 2001 attached hereto.

MAKAH TRIBAL COUNCIL

By: 
Greig Arnold
Chairman

CERTIFICATION

The foregoing Resolution was adopted at a regular meeting, held on 5-30-01 at which a quorum was present, and the Resolution was adopted by a vote of 3 FOR and 0 AGAINST, the Chairman or the Vice Chairman in his absence, being authorized to sign the Resolution.

By: Julien H. Houghton - R. H. Houghton
Tribal Secretary

**MANAGEMENT PLAN FOR MAKAH TREATY GRAY WHALE
HUNTING FOR THE YEARS 1998-2002
AS AMENDED APRIL 2001**

I. Introduction.

The purpose of this plan is to set forth the Makah Tribe's management intent and applicable Tribal regulations to govern the exercise of treaty ceremonial and subsistence whaling rights during the period 1998 through 2002. This management plan is adopted pursuant to Article 4 of the Treaty of Neah Bay, and the International Convention for the Regulation of Whaling ("ICRW") Schedule Amendment adopted by the International Whaling Commission ("IWC") on October 23, 1997. Under the ICRW Schedule Amendment, the Makah Tribe is authorized to share a five year aboriginal subsistence quota of 620 gray whales with the indigenous people of Chukotka, Russia.

The IWC was informed that under an Agreement between NOAA and the Council, the Makah gray whale harvest would not exceed 51anded whales per year. The management plan contains a number of additional management measures adopted voluntarily by the Tribe to ensure the orderly development of safe, humane, and culturally appropriate whale hunts. In accordance with the ICRW Schedule Amendment, the management plan strictly prohibits commercial sale of whale products except for traditional handicrafts (including artwork) made from non-edible parts of the whale. No international trade is permitted.

It is the Tribe's intent to provide for the gradual development of ceremonial and subsistence whale hunts over the five-year period so as to allow for the development of Tribal management capabilities, refinement of hunting methods, and assessment of the Tribe's cultural and subsistence needs. The Tribe intends to utilize the experience and information collected during the five year term of this plan to develop a second multi-year plan, pending IWC review of the current ICRW Schedule. The conservative management approach provided for in this management plan is not intended to limit, waive or modify any of the Tribe's whaling rights under the Treaty of Neah Bay and any such construction of this plan is improper and unauthorized.

11. Definitions.

- A. "Calf" means any whale less than 1 year old or having milk in its stomach.
- B. "Council" means the Makah Tribal Council.
- C. "Commission" means the Makah Whaling Commission.
- D. "Landing" means bringing a whale or any parts of a whale onto land in the course of whaling operations.
- E. "Member" means an enrolled member of the Makah Indian Tribe.
- F. "Natural Resources Department" or "NRD" means the Makah Natural Resource Department.
- G. "Strike" means any blow or blows delivered to a whale by a harpoon, lance, rifle, explosive device or other weapon. When used as a verb, "strike" means the act of delivering such a blow or blows to a whale. A harpoon blow is a strike only if the harpoon is embedded in the whale. Any rifle shot which hits a whale is a strike. For purposes of Parts III.C and III.F, multiple strikes on a single whale shall count as a single strike.
- H. "Take" means to flag, buoy or make fast to a whale catcher, including a canoe, chase boat or support boat.
- I. "Tribe" means and "tribal" refers to the Makah Indian Tribe.
- J. "Whale products" means any unprocessed part of a whale and blubber, meat, bones, whale oil, meal and baleen.
- K. "Whaling" means the scouting for, hunting, striking, killing, or landing of a whale.
- L. "Whaling captain" means the member in charge of a whaling team who holds a whaling permit issued by the Commission and approved by the

Council under this management plan.

- M. “Whaling expedition” means a complete voyage in which a whaling team leaves port or shore for the purpose of whaling and returns to port or shore.
- N. “Whaling team” means a group of members under the control of a whaling captain who holds a whaling permit issued by the Commission and approved by the Council under this management plan.

III. Harvest Quotas/Strike Limits.

- A. The total number of gray whales taken by members in any one calendar year shall not exceed five (5).
- B. The total number of gray whales taken by members between 1998 and 2002 shall not exceed twenty (20).
- C. The total number of gray whales struck by members between 1998 and 2002 shall not exceed thirty-three (33), provided that the Commission and the Council will take prudent management measures to reduce the ratio of struck whales to landed whales in any one calendar year to no more than 2:1. The total number of gray whales struck by members between 2001 and 2002 shall not exceed fourteen (14).
- D. No member may strike a gray whale calf or a female gray whale accompanied by a calf or calves.
- E. No member may strike a whale other than a gray whale.
- F. The total number of gray whales struck by members between 2001 and 2002 in the Strait of Juan de Fuca east of the Tatoosh-Bonilla line or between June 1 and November 30 in the Pacific Ocean west of the Tatoosh-Bonilla line shall not exceed five (5).

IV. Permits.

- A. No member may engage in whaling except under the control of a whaling captain who is in possession of a valid whaling permit issued by the Commission and approved by the Council. All whaling permits issued by the Commission and approved by the Council shall incorporate all of the requirements of this management plan and any additional requirements the Commission and Council deem appropriate. Upon reaching the strike limit in Part III.F above, whaling permits shall be issued with the intent of targeting migrating whales.
- B. Any whaling permit issued by the Commission and approved by the Council shall be issued only to a whaling captain certified by the Commission pursuant to Part V below. The permit shall identify the vessels which will participate in the hunt, the members who will be part of the captain's whaling team, and the boundaries of the designated area in which hunting will be permitted.
- C. The Commission shall not issue and the Council shall not approve a whaling permit without determining that the whaling captain and each whaling team member has been certified by the Commission as qualified to perform his assigned role on the whaling team.
- D. The Council shall provide at least 24 hours advance notice to the National Marine Fisheries Service ("NMFS") and the United States Coast Guard ("USCG") prior to approving a whaling permit. The advance notice requirement shall not apply if a NMFS observer is already present on the Makah Reservation. The whaling captain shall coordinate with the on-site NMFS observer and the Coast Guard prior to departing on a whaling expedition.
- E. A whaling permit shall terminate when any one of the following events occurs: (1) the whaling team lands a gray whale; (2) the whaling team strikes a gray whale but is unable to land it; (3) the whaling team has not struck or landed a whale within 1.0 days of permit approval; or (4) the Commission or the Council determine, for any reason, to terminate the permit.

- F. The Commission may issue a whaling permit only after determining that there is an unmet traditional subsistence or cultural need for whale products in the tribal community.

V. **Training/Qualifications.**

The Commission shall establish certification guidelines and a certification process for whaling captains, harpooners, riflemen, divers, canoe paddlers, and other whaling teammembers. The certification guidelines and the certification process shall ensure that every whaling captain and each member who serves on a whaling team has received adequate training to perform his assigned role on the team. Certification of riflemen shall include a demonstration of proficiency and accuracy under simulated hunting conditions.

VI. **Whaling Vessels, Equipment and Hunting Method:.**

- A. A whaling team must include one or more canoes, one or more chase boats, and one or more support boats.
- B. All canoes used in whaling must be at least 30 feet in length and manned by a harpooner and at least six paddlers.
- C. All chase boats used in whaling must be at least 18 feet in length and powered by an engine large enough to tow an adult gray whale to port. Each chase boat shall be manned by a pilot, diver, rifleman, and harpooner. The diver or an additional crew member shall act as a safety officer. One boat shall be equipped with a navigation system capable of precisely fixing the vessel's position on the water.
- D. All whaling harpoons must be equipped with a toggle point, connected to one or more floats, and bear a permanent distinctive mark identifying the whaling captain who is in charge of the whaling team using the harpoon.

- E. The rifle used in gray whale hunts shall be an adequate very high-powered rifle (.458 caliber or higher), approved by the Commission for use in whaling.
- F. The first strike made upon a gray whale shall be made by the harpooner on a canoe and shall affix one or more floats to the whale. The chase boat will pursue the whale and the rifleman aboard the chase boat will kill the whale as expeditiously as practicable with rifle shots directed at the whale's brain and upper spinal cord.
- G. The rifleman on the chase boat shall not discharge his weapon until authorized to fire by the safety officer. The safety officer will not authorize the discharge of the rifle unless: (1) the barrel of the rifle is above and within 30 feet or less from the target area of the whale; and (2) the safety officer determines that the rifleman's field of view is clear of all persons, vessels, buildings, vehicles, highways and other objects or structures that if hit by a rifle shot could cause injury to human life or property.
- H. The whaling captain will suspend the hunt, if the safety officer determines that visibility is less than 500 yards in any direction.
- I. Upon the death of a whale, the chase boat crew will secure the whale for towing to shore. The whale will be expeditiously towed to shore by a chase or support boats.
- J. By following the general procedures set out herein, whaling teams shall make best efforts to land every whale that is struck and shall ensure that the hunt does not pose a risk to human life and property.
- K. The Commission shall conduct research and development to further refine the hunting methods set out in this management plan. Upon consultation with the Commission and the National Marine Fisheries Service, the Council may periodically amend the provisions of this part to improve the safety, effectiveness and humaneness of gray whale hunts.

VII, Area Restrictions.

- A. All whaling shall occur within the adjudicated usual and accustomed grounds of the Makah Tribe.
- B. Within the area open to whaling under paragraph A above, whaling may be confined to an area designated by the Commission and the Council in each whaling permit.
- C. The initial strike of a whale shall not occur within 200 yards of Tatoosh Island or White Rock between May and September.
- D. A whale shall not be struck within the "closed area" designated in Section 10.5.02 of the Makah Law and Order Code (Weapons Control Ordinance No. 43 enacted 9/5/89) or east of the "closed area" to a line extending from the southern end of Waadah Island to Baada Point
- E. Whaling may occur only within the Regulated Navigation Area (RNA) established by the United States Coast Guard as amended.

VIII. Use of Meat and Whale Products.

- A. Whale products taken pursuant to this management plan shall be used exclusively for local consumption and ceremonial purposes and may not be sold or offered for sale. No member may receive money for participation in whaling.
- B. Notwithstanding paragraph A above, traditional handicrafts (including artwork) made from non-edible whale product, may be sold or offered for sale within the United States. A member may not engage in international trade of these handicrafts.
- C. The Commission shall periodically monitor the utilization of whale products within whaling families and the tribal community to determine when an unmet need for whale meat or other products exists. The Commission may conduct research in order to accurately and

systematically estimate the 'Tribe's traditional subsistence and cultural needs.

IX. Monitoring and Reporting.

- A. A Makah Natural Resources Department ("NRD") representative will accompany each whaling team as an observer. Upon request of NMFS, the NRD representative will permit an additional observer from the Northwest Region of the National Marine Fisheries Service to observe the hunt.
- B. The NRD observer shall be responsible for recording the time, date and precise location of each whale struck. For each whale struck, the NRD observer shall record whether the whale is landed. If the whale is not landed, the NRD observer shall describe the circumstances associated with the striking of the whale and estimate whether the animal suffered a wound that might be fatal.
- C. For each whale landed, the NRD observer shall record the body length (as measured from the point of the upper jaw to the notch between the tail flukes), the extreme width of the flukes, and the sex of the whale. The NRD observer shall also record the length and sex of any fetus in the landed whale.
- D. The NRD observer shall record the time interval between the initial strike and the death of the whale.
- E. The NRD shall be responsible for compiling and transmitting the weekly and annual reports required under the Agreement between the Council and NOAA. During periods in which whaling permits have been issued, the NRD will provide the National Marine Fisheries Service with a weekly oral report regarding the number of whales struck and landed. To the extent specified in any bilateral agreement, the NRD will also provide periodic oral or written reports regarding the number of whales struck and landed to representatives of the Russian Federation,

F. By January 30 of each year, the NRD and the National Marine Fisheries Service will prepare a joint written report compiling all of the data accorded by the NRD under paragraphs B through D above, as well as any additional data recorded by National Marine Fisheries Service personnel.:

G. The NRD will assist National Marine Fisheries Service personnel in the collection of specimen material from landed whales, including but not limited to, ovaries, ear plugs, baleen plates, stomach contents, and tissue samples. The NRD may collect additional samples for its own use as part of the Tribe's research and management activities.

X. Enforcement.

A. The Natural Resources Enforcement Division shall be the Tribal law enforcement agency responsible for enforcing the requirements of whaling permits and this management plan.

B. Any member found whaling in violation of this management plan or the terms of a whaling permit issued by the Commission and approved by the Council. shall be subject to prosecution in Tribal Court for a Class AA criminal offense in accordance with the procedures set forth in Title 2 of the Makah Law and Order Code.

C. A whaling captain shall be deemed liable for any violations of a whaling permit or this management plan committed by a member of a whaling team under his control.

XI. Penalties.

A. Any member convicted by the Tribal Court of the offense of whaling in violation of this management plan or the terms of any whaling permit issued by the Council shall be subject to the penalties for a Class AA criminal offense under Section 5.8.01 of the Makah Law and Order

Code?

- B. Members convicted of said offense may also be barred from exercising treaty fishing, hunting and/or whaling rights for up to three (3) years.
- C. In determining the severity of punishment, the Court shall consult with the Commission and take into account the seriousness of the injury to the Tribe and Tribal resources.

XII. Amendments.

The Council may amend this management plan from time to time in consultation with the Commission and NOAA as new information becomes available, provided that the requirements of the management plan shall comply with the ICRW Schedule Amendment, any cooperative agreement between NOAA and the Council, and all applicable federal law.

¹ Section 5.8.01 of the Makah Law and Order Code currently provides that Class AA offenses are punishable by a fine not to exceed \$5000 and imprisonment not to exceed 12 months.